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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/099,929	03/13/2002	Bobby E. Rogers	CARDIO.004A	2700

20985 7590 11/19/2004

FISH & RICHARDSON, PC  
12390 EL CAMINO REAL  
SAN DIEGO, CA 92130-2081

EXAMINER
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LAYNO, CARL HERNANDZ

ART UNIT	PAPER NUMBER
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3762

DATE MAILED: 11/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/099,929	<b>Applicant(s)</b> ROGERS ET AL.	
	<b>Examiner</b> <i>Carl H. Layno</i> Carl H. Layno 11/17/04	<b>Art Unit</b> 3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 20 September 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) 1-5, 7, 9, 10, 12, 15-17, 19, 20 and 25-35 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8, 13, 21-24 and 36-49 is/are allowed.
- 6) ☒ Claim(s) 6, 11, 14 and 18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 September 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. Acknowledgment is made of applicant's amendment and one month extension of time which were received by the Office on September 20, 2004.

2. Claims 1-5, 7, 9, 10, 12, 15-17, 19, 20, and 24-25 are canceled.

#### ***Drawings***

3. Applicant's formal drawings were received by the Office on September 20, 2004 have been approved by both the Draftsperson and the Examiner. See attached PTO-948.

#### ***Specification***

4. In view of the applicant's modifications to the Abstract, the Examiner is withdrawing the objections which were made against the specification in the last Office action.

#### ***Claim Rejections - 35 USC § 112***

5. In view of applicant's modifications to the claims and claim cancellations, the Examiner is withdrawing the 35 U.S.C 112 2<sup>nd</sup> paragraph rejections which were made against claims 12-20, 43, and 49 in the last Office action.

#### ***Claim Rejections - 35 USC § 102***

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6. In view of applicant's numerous claim cancellations, the Examiner is withdrawing the 35 U.S.C 102(b) rejections based upon the references of Adams et al '245, Markowitz et al '630, Duffin et al '976, and Cox et al '588 which were made against claims 1-5, 7, 9, 10, 12, 15-17, 19, 20, 25, 29, and 31-34 in the last Office action.

7. Having conducted a follow-up search, the Examiner discovered new art which appears to be pertinent; consequently, the following new grounds of rejection are being made in this action:

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claim 6 is rejected under 35 U.S.C. 102(e) as being anticipated by Poore '991-A1 or Schulman et al '885-B2.

The Poore '991-A1 U.S. Patent Application Publication describes an ambulatory system (Fig.1) for monitoring an implanted medical device **200** using a portable device **100**, which performs the functions of applicant's "communications apparatus". The portable device **100** (Fig.2) comprises a telemetry interface circuit **156**, which performs the function of applicant's "two-way transceiver", memory **162**, a control module/processor **150**, and EKG electrodes **120** and sensing circuits **152** for processing a patient's cardiac signals (including those generated by

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the implanted device 200). The portable device 100 also includes an I/O interface 160 for communicating with an external monitor/PC 172.

The Schulman et al '885-B2 patent describes a system (Fig.2) including an implantable system control unit (SCU) 302, which communicates with a plurality of implanted sensors 100c and stimulators 100a using a transmitter and receiver 304,306, and a transceiver 314 for communicating with an external programmer 172. The SCU 302 also includes memory storage 310, a controller 308. Sensors 100c are capable of monitoring voltages and currents within a patient's body, which would inherently include cardiac signals (col.7, lines 24-25).

#### *Claim Rejections - 35 USC § 103*

10. In view of applicant's cancellation of claims 26-30, the Examiner is withdrawing the 35 U.S.C 103(a) rejection of Cox et al '588 in view of Snell '771 (Applicant's prior art) which was made against claims 1-5, 7, 9, 10, 12, 15-17, 19, 20, 25, 29, and 31-34 in the last Office action.

11. Claims 11, 14, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haller et al '588 in view of Strandberg'064.

The Haller et al '558 patent describes a system for communication between an implantable medical device 10 (Fig.6A) and a remote computer monitoring center 130 including a cell phone 110 and communications module 100, which collectively, perform the function of applicant's "external monitor". Cell phone 110 includes communication circuits for connecting with remote computer system 130 over a long-range communications system 120, such as the

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Internet (col.19, lines 11-16). The implantable medical device **10** comprises telemetry circuitry **78** (Fig.3) for communicating bi-directionally with external monitor **100,110**.

The Strandberg '064 patent describes an implantable medical device **1** (Figs.1 and 2) capable of communicating bi-directionally with an external monitor **30**, and also communicating with a plurality of implantable body sensors **6,7**.

To have modified the implantable medical device **10** of Haller with circuits permitting wireless interaction with other implantable medical devices would have been an obvious modification given that the Haller device is already capable of doing so (see IMDs **10, 10', 10''** in Fig.8), and can specifically be used with the Strandberg devices (col.32, lines 16-25).

In regard to claim 11, the modified implantable device **10** can be attached through interconnecting leads to the implantable sensors described by Strandberg (see Haller et al '558 col.32, lines 20-21).

#### *Allowable Subject Matter*

12. As amended, claims 8, 13, 21-24, and 36-49 are allowed.

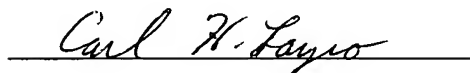
#### *Conclusion*

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carl H. Layno whose telephone number is (571) 272-4949. The examiner can normally be reached on Monday thru Thursday from 9 AM to 6 PM and every other Friday between 9AM and 5PM. A voice mail or E-mail message ([carl.layno@uspto.gov](mailto:carl.layno@uspto.gov)) may be left if desired.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes, can be reached on (571) 272-4955. All faxed communications should be sent to the Office's Official FAX number (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Legal Instruments Examiner (LIE) Brenda Webb whose telephone number is (571) 272-4399.

A handwritten signature in cursive script, reading "Carl H. Layno", is written over a horizontal line.

CARL LAYNO  
PRIMARY EXAMINER

CHL  
11/17/2004